

Senate File 2362 - Enrolled

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SENATE FILE 2362

AN ACT

RELATING TO INVOLUNTARY HOSPITALIZATION PROCEEDINGS FOR
CHRONIC SUBSTANCE ABUSERS AND PERSONS WITH MENTAL ILLNESS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 125.82, subsections 1 and 3, Code 2005,
are amended to read as follows:

1. At a commitment hearing, evidence in support of the contentions made in the application ~~shall~~ may be presented by the applicant, or by an attorney for the applicant, or by the county attorney ~~if the county attorney is the applicant.~~ During the hearing the applicant and the respondent shall be afforded an opportunity to testify and to present and cross-examine witnesses, and the court may receive the testimony of other interested persons. If the respondent is present at the hearing, as provided in subsection 3, and has been medicated within twelve hours, or a longer period of time as the court may designate, prior to the beginning of the hearing or a session of the hearing, the court shall be informed of that fact and of the probable effects of the medication upon convening of the hearing.

3. The person who filed the application and a physician or professional who has examined the respondent in connection with the commitment hearing shall be present at the hearing, unless prior to the hearing the court for good cause finds that their presence or testimony is not necessary. The applicant, respondent, and the respondent's attorney may waive the presence or telephonic appearance of the physician or professional who examined the respondent and agree to submit as evidence the written report of the physician or professional. "Good cause" for finding that the testimony of the physician or professional who examined the respondent is not necessary may include, but is not limited to, such a waiver. If the court determines that the testimony of the physician or professional is necessary, the court may allow the physician or professional to testify by telephone. The respondent shall be present at the hearing unless prior to the hearing the respondent's attorney stipulates in writing that the attorney has conversed with the respondent, and that in the attorney's judgment the respondent cannot make a meaningful contribution to the hearing, or that the respondent has waived the right to be present, and the basis for the attorney's conclusions. A stipulation to the respondent's absence shall be reviewed by the court before the hearing, and may be rejected if it appears that insufficient grounds are stated or that the respondent's interests would not be served by the respondent's absence.

Sec. 2. Section 229.10, subsection 1, unnumbered paragraph 1, Code 2005, is amended to read as follows:

An examination of the respondent shall be conducted by one or more licensed physicians, as required by the court's order, within a reasonable time. If the respondent is detained pursuant to section 229.11, subsection 2, the examination shall be conducted within twenty-four hours. If the respondent is detained pursuant to section 229.11, subsection 1 or 3, the examination shall be conducted within forty-eight hours. If the respondent so desires, the respondent shall be entitled to a separate examination by a licensed physician of the respondent's own choice. The reasonable cost of ~~such separate examination~~ the examinations shall, if the respondent lacks sufficient funds to pay the cost, be paid from county funds upon order of the court.

Sec. 3. Section 229.12, subsection 3, Code 2005, is amended to read as follows:

3. The respondent's welfare shall be paramount and the hearing shall be conducted in as informal a manner as may be consistent with orderly procedure, but consistent therewith the issue shall be tried as a civil matter. Such discovery as is permitted under the Iowa rules of civil procedure shall be available to the respondent. The court shall receive all

3 4 relevant and material evidence which may be offered and need
3 5 not be bound by the rules of evidence. There shall be a
3 6 presumption in favor of the respondent, and the burden of
3 7 evidence in support of the contentions made in the application
3 8 shall be upon the applicant. The physician or professional
3 9 who examined the respondent shall be present at the hearing
3 10 unless prior to the hearing the court for good cause finds
3 11 that the physician's or professional's presence or testimony
3 12 is not necessary. The applicant, respondent, and the
3 13 respondent's attorney may waive the presence or the telephonic
3 14 appearance of the physician or professional who examined the
3 15 respondent and agree to submit as evidence the written report
3 16 of the physician or professional. "Good cause" for finding
3 17 that the testimony of the physician or professional who
3 18 examined the respondent is not necessary may include, but is
3 19 not limited to, such a waiver. If the court determines that
3 20 the testimony of the physician or professional is necessary,
3 21 the court may allow the physician or the professional to
3 22 testify by telephone. If upon completion of the hearing the
3 23 court finds that the contention that the respondent is
3 24 seriously mentally impaired has not been sustained by clear
3 25 and convincing evidence, it shall deny the application and
3 26 terminate the proceeding.

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3 31 JEFFREY M. LAMBERTI
3 32 President of the Senate
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4 1 CHRISTOPHER C. RANTS
4 2 Speaker of the House

4 3 I hereby certify that this bill originated in the Senate and
4 4 is known as Senate File 2362, Eighty-first General Assembly.

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4 9 MICHAEL E. MARSHALL
4 10 Secretary of the Senate

4 10 Approved _____, 2006

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4 13 _____
4 14 THOMAS J. VILSACK
4 15 Governor